

Decision

Filed: November 26, 2013

State of Louisiana
Civil Service Commission

Docket No. S-17523

Walter Cole, Jr.

Versus

Division of Administration, Office of State Buildings

Rule(s): 12.2; 12.8
Topic(s): Dismissal; insubordination; notice of disciplinary action

Appearances: Behlia Martin, counsel for Mr. Cole
Paul A. Holmes, counsel for DOA, OSB

Statement of the Appeal

The Division of Administration (DOA), Office of State Buildings (OSB) employed Walter Cole, Jr. as a Horticultural Attendant Leader and he served with permanent status. By letter dated November 1, 2012, DOA dismissed Mr. Cole effective at close of business that day. DOA alleges that Mr. Cole was insubordinate on August 21, 2012, by his failure to obey the directives of his supervisors. In support of the severity of the penalty, DOA refers to a two (2) day suspension it imposed upon Mr. Cole in June of 2012, for insubordination and a letter of reprimand it gave to him in July of 2012, for insubordination.

On November 26, 2012, Mr. Cole filed an appeal in which he denies the allegations of the dismissal letter and contends that DOA failed to comply with Civil Service Rule (CSR) 12.8. As relief, he requests reinstatement, back wages, and attorney's fees.

On January 11, 2013, I issued a notice to DOA requesting that it provide me with information and documentation as to how and when it had provided prior written notice to Mr. Cole of his dismissal as required by CSR 12.8. On January 18, 2013, DOA responded to my notice. Based on DOA's response, I recalled the January 11, 2013 notice on January 24, 2013, and referred the issue to the merits.

I held a public hearing on March 20, 2013, and on July 11, 2013, in Baton Rouge, Louisiana. Based upon the evidence presented and pursuant to the provisions of Article X, § 12(A) of the Louisiana Constitution of 1974, as amended, I make the following findings and reach the following conclusions.

Findings of Fact

1. DOA employed Mr. Cole at OSB as a Horticultural Attendant Leader and he served with permanent status. The duties of a Horticultural Attendant require stooping and bending. Due to the physically strenuous nature of its jobs and a reduced workforce, OSB does not have a "light duty" policy; instead, OSB requires that employees with medical restrictions must be placed on leave until fully released by their physicians to return to work.
2. On August 21, 2012, Mr. Cole arrived at work at 6:30 a.m. At 7:00 a.m., he presented Mathilde Myers, Horticulture Manager, with a note from his physician, Brian P. Higgins, M.D., stating that Mr. Cole should refrain from stooping and bending in the course of his work duties.
3. Later that morning, Glenn Frazier, Assistant Director, and Ms. Myers met with Mr. Cole to explain that a light duty assignment was not available and that, based on his physician's note, they were placing Mr. Cole on leave covered by the Family and Medical Leave Act (FMLA) until his physician fully released him for work. Previously, DOA had notified Mr. Cole that he had incurred six unscheduled absences and could face removal from his position under CSR 12.6(a)2 for a seventh unscheduled absence.
4. Mr. Frazier explained to Mr. Cole that while he was on leave covered by the FMLA, his covered absences would not be considered unscheduled under CSR 12.6(a)2. Mr. Cole just smirked and looked at the ceiling. Ms. Myers gave Mr. Cole an FMLA leave packet and a leave slip indicating that his absence would be covered by the FMLA, and told him that his physician needed to complete the enclosed forms to substantiate his need for FMLA leave.
5. Mr. Cole glared at Mr. Frazier. He threw the FMLA packet across Ms. Myers' desk, causing it to land in her lap, while saying, "I'll come back at you!" Ms. Myers and Mr. Frazier continued trying to explain to Mr. Cole that he could not return to work until his physician provided him with a full release, and that his absences covered by the FMLA would not be considered unscheduled. Mr. Cole became upset and refused to leave.
6. Ms. Myers and Mr. Frazier ordered Mr. Cole to leave the workplace. Mr. Cole again refused to leave. Mr. Frazier told Mr. Cole that if he did not leave he would have to summon an officer from the Department of Public Safety (DPS) to remove him. Mr. Cole continued to refuse to leave and said, "Do what you have to do!"
7. Julie Cooper, Administrative Program Director 2, called DPS and asked them to send an officer to escort Mr. Cole from the premises. DPS officers arrived at 9:45 a.m.

Ms. Myers and Mr. Frazier apprised them of the situation, and the officers went to the break room where they found Mr. Cole.

8. Lieutenant (Lt.) Charlie Jarrell began discussing the situation with Mr. Cole. Mr. Cole told Lt. Jarrell that DOA was placing him on leave unfairly and he was not going to leave. Mr. Cole requested that DOA provide him with a letter stating it was forcing him to leave work and his “time” would not be affected. Lt. Jarrell explained that the leave slip and FMLA leave packet he had received were sufficient to meet his request, but Mr. Cole continued to refuse to leave. Mr. Cole then stood up, placed his hands behind his back, and advised Lt. Jarrell, “Do what you have to do because I’m not leaving. I’m here to work!”

9. Lt. Jarrell arrested Mr. Cole for criminal trespassing and transported him to the DPS Police-Capitol Detail headquarters where he was processed and issued a misdemeanor summons.

10. On October 31, 2012, DOA hand-delivered a letter of dismissal dated November 1, 2012, to Mr. Cole. The dismissal letter states that the dismissal is “effective at close-of-business today.” DOA intended that his dismissal would be effective at the close of business on November 1, 2012, so on that day it mailed Mr. Cole a second letter explaining that his last day of work would be on November 1, 2012. DOA also paid Mr. Cole through the close of business on November 1, 2012, despite the fact that he did not come to work that day.

11. On June 6, 2012, and prior to the incident at issue in this appeal, DOA imposed a two (2) day suspension upon Mr. Cole for insubordination. DOA also gave Mr. Cole a letter of reprimand on July 30, 2012, for insubordination.

Discussion and Conclusions of Law

The right of a classified state employee to appeal disciplinary actions is provided for in Article X, § 8(A) of the Louisiana Constitution of 1974. That section provides that “[t]he burden of proof on appeal, as to the facts, shall be on the appointing authority.” The appointing authority must prove its case by a preponderance of the evidence. A preponderance of evidence means evidence that is of greater weight or more convincing than that which is offered in opposition thereto. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact or causation sought to be proved as more probable than not.” *Wopara v. State Employees’ Group Benefits Program*, 2002-2641, (La. App. 1 Cir. 7/2/03), 859 So.2d 67.

In his appeal, Mr. Cole contends that the dismissal letter dated November 1, 2012, that he received on October 31, 2012, does not comply with the requirements of CSR 12.8. This contention is without merit.

Under CSR 12.8, an agency taking disciplinary action against an employee must give the employee prior written notice of the action. The disciplinary letter must specify what

action is being taken, the effective date and time of the action, and the underlying factual basis for the action. The disciplinary letter must also contain a notice of appeal rights.

Mr. Cole's dismissal letter dated November 1, 2012, informed him that he was being dismissed "effective at close-of-business today." Mr. Cole received the dismissal letter on October 31, 2012. However, DOA made the dismissal effective at close of business on November 1, 2012, by paying him through that date and time. Mr. Cole thus received prior written notice of his dismissal as required by CSR 12.8, i.e. before the dismissal became effective. Moreover, the dismissal letter identifies the action being taken and the facts supporting the action, and it contains the requisite notice of appeal rights. Therefore, I conclude that DOA complied with all of the requirements of CSR 12.8.

DOA charges Mr. Cole with insubordination for failing to follow the directives of his supervisors to leave the workplace after DOA placed him on leave on August 21, 2012. That morning, after informing Mr. Cole that he was on leave, Mr. Frazier and Ms. Myers both directed him to leave the premises. Mr. Cole was upset and being disrespectful to Mr. Frazier and Ms. Myers because they would not allow him to work with medical restrictions. Despite their express directives for him to leave and Mr. Frazier's warning that DPS officers would be called if he did not comply, Mr. Cole refused to leave saying, "Do what you have to do!" Mr. Cole's failure to leave the workplace as directed ultimately culminated in his arrest by DPS officers for criminal trespass.

State classified employees must obey the orders of their superiors and failure to do so impairs the efficiency of the public service. *Ben vs. Housing Authority of New Orleans*, 2003-1664, (La.App. 1 Cir. 5/14/04); 879 So.2d 803. Insubordination by its very nature is detrimental to the state service. *Housing Authority of Morgan City v. Gibson*, 598 So.2d 545 (La.App. 1 Cir. 1992). An employee's respect for and obedience to supervisors is essential to the operation of a public agency. *Portis v. Department of Corrections*, 407 So.2d 435 (La.App. 1st Cir. 1981). I conclude that DOA has proved cause for discipline against Mr. Cole.

The Supreme Court of Louisiana has held that it is the duty of the Commission and its Referees to independently decide from the facts presented whether the appointing authority has legal cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *AFSCME, Council #17 v. State ex rel. Dept. of Health and Hospitals*, 789 So.2d 1263 (La., 2001). DOA proved that Mr. Cole violated supervisory directives by failing to leave the workplace on August 21, 2012, and was thereby clearly insubordinate. Prior to the incident at issue in this appeal, DOA had suspended Mr. Cole for two days and given him a letter of reprimand for previous acts of insubordination. Based on the foregoing reasons, I conclude that DOA proved legal cause for discipline and that the penalty imposed, dismissal, is commensurate with the offense.

Accordingly, I hereby deny this appeal.

Kathe R. Zolman-Russell
Civil Service Commission Referee